

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

V.

CRIMINAL ACTION NO: 4:13CR112-SA

JOHNNY CONGUISTA

DEFENDANT

ORDER ON PETITION TO VACATE PREDICATE CONVICTION

Petitioner Johnny Conguista again seeks to vacate his predicate conviction in order to have his firearm disability removed. Conguista pled guilty in 2013 to embezzlement pursuant to 18 U.S.C. § 641. As a result of this felony conviction, Conguista became subject to Federal firearms disabilities under Title 18 U.S.C. § 922(g), which makes it unlawful for any person “who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year” to possess a firearm. A convicted felon may lift his firearms disability if he received a pardon expressly permitting him to possess a firearm, or gets the predicate conviction vacated before obtaining a weapon, or secures the consent of the secretary of the treasury. *Lewis v. United States*, 445 U.S. 55, 100 S. Ct. 915, 63 L. Ed. 2d 198 (1980); *Beecham v. United States*, 511 U.S. 368, 114 S. Ct. 1669, (1994) (state’s restoration of civil rights did not remove disability of firearm possession imposed by federal law); *see also United States v. McGill*, 74 F.3d 64 (5th Cir. 1996) (explaining application from relief to the Secretary of the Treasury, which has delegated the authority to relieve firearms disability to the Director of the ATF).

Conguista contends that as he has not received a pardon, and the ATF is not properly funded to do background checks for the Secretary of the Treasury, his only option for relief is for the Court to vacate the predicate conviction. That request is DENIED.

SO ORDERED, this the 19th day of April, 2018.

/s/ Sharion Aycock
U.S. DISTRICT JUDGE